



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare &  
Medicaid Services

Refer to DMCH: SJ

Region II  
Federal Building  
26 Federal Plaza  
New York, N.Y. 10278

August 11, 2011

Jason A. Helgeson  
Deputy Commissioner  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

Dear Commissioner Helgeson:

This letter is being sent in conjunction with the Centers for Medicare & Medicaid Services' (CMS) approval of New York State Plan Amendment (SPA) #11-36, which amendment updates the reimbursement methodology for orthopedic footwear.

In reviewing SPA 11-36, CMS staff performed a program analysis of the corresponding services and a reimbursement analysis related to the services impacted by the provisions of the SPA. These analyses revealed coverage issues which the State needs to address through State plan amendments in order to meet the requirements of Section 1902 of the Social Security Act. To this end, CMS welcomes the opportunity to work with you and with your staff in resolving the concerns outlined below.

NY 11-36 –Related (Coverage) Issues

We understand that the State desires to address the corresponding home health related questions in NY 11-36 when the State addresses the home health questions from the companion letter issued in NY 10-38. We are including the questions from the companion letter below as a convenience to the State when it submits its response to the companion letter and to the additional questions in 11-36.

Questions from the Companion Letter issued in NY 10-38:

The regulations at 42 CFR 440.70 define home health services as including part-time or intermittent nursing services, home health aide services and medical supplies, equipment and appliances. At the State's option physical therapy, occupational therapy, speech pathology or audiology services may also be offered. To be comprehensive, the services; the providers and practitioners of the services; the provider and practitioner qualifications; and any limitations on amount, duration and scope of the services must be understandable, clear and unambiguous. To that end, please clarify, and, where applicable, include the following information in the State plan:

1. Please add in the State plan coverage pages after the last paragraph in the introduction a summary of the agency provider qualifications standards and certifications and include the requirement that AIDS home care program providers and certified home health agencies must conduct criminal background checks (State and national) for prospective employees as indicated on pages 4(a)(i)(A) and 4(a)(i)(2) and on pages 4(a)viii and 4(a)ix of Attachment 4.19-B. Please clarify that home health agencies meet requirements for participation in Medicare located at 42 Code of Federal Regulations (CFR) Part 484.
2. Please confirm our understanding that home health care services do not include audiology services. If they do, then please revise the first paragraph in the introduction above to include audiology services
3. Please insert the following in the State plan after the heading “Intermittent or part-time Nursing”:

Recipients must be assessed as being appropriate for intermittent or part-time nursing services ordered by a physician pursuant to a written plan of care provided by a home health agency upon admission to an Assisted Living Program (ALP) no later than 45 days from the date of admission and at least once during each subsequent six month period. The social services district must review the assessment and prior authorize the service.

Registered professional nurses furnish intermittent or part-time nursing services. A registered professional nurse means a person who is licensed and currently registered as a nurse pursuant to Article 139 of the New York State Education law.

4. Please include in the State plan any limitations on amount, duration or scope of intermittent or part-time nursing services. Are these limitations sufficient so that approximately 90% of Medicaid individuals needing these services would be fully served at these limitations?
5. Please include in the State plan any limitations on amount, duration or scope of home health aide services. Are these limitations sufficient so that approximately 90% of Medicaid individuals needing these services would be fully served at these limitations?
6. Please add a definition of “medical supplies, equipment, and appliances” to the State plan coverage pages.
7. Please include in the State plan any limitations on amount, duration or scope of medical supplies, equipment, and appliances. Are these limitations sufficient so that approximately 90 % of Medicaid individuals needing these services would be fully served at these limitations?

8. Please include the following language in the State plan: “PT, OT and Speech pathology and audiology services, and providers of these services, meet the requirements at 42 CFR 440.110.”
9. Please include in the State plan any limitations on amount, duration or scope of PT, OT and Speech Pathology services.
10. On page 4(a)(i)(3) of Attachment 4.19-B, the State lists “Personal Emergency Response Services” (PERS). Does the State intend PERS to be included as part of “medical supplies, equipment, and appliances”? If so, please define PERS and list it under “medical supplies, equipment, and appliances” on the coverage page.
11. On page 4(a)(i)(A) of Attachment 4.19-B, the State plan indicates that there is “specialty training of direct service personnel in dementia care; pediatric care; and the care of other conditions or populations with complex needs.” It also indicates a reason for the higher rates is “providing enhanced access to care for high need populations.”
  - a. In the coverage pages, please add a description of the specialty training and explain who will furnish it and who will receive it. It seems appropriate to add this description after the agency provider qualifications section.
  - b. In the coverage pages, please add an explanation for “enhanced access to care for high need populations” including a description of “high need populations”.
12. On page 4(c)(1) of Attachment 4.19-B, the State lists “Assisted Living Programs.” CMS reimburses for State plan services furnished in non-institutional settings not the settings themselves. If the State intends to provide Personal Care Services, Home Health Care Services, Personal Emergency Response Services, and/or Adult Day Health Care in Assisted Living settings, then these settings should be added as settings for each of the relevant services in the coverage pages. Depending on the State’s answer, additional revisions to the coverage and reimbursement pages may be necessary.
13. On page 5(a)(vii) of Attachment 4.19-B, the first paragraph references a “demonstration project”. Please explain this reference. Depending on the State’s answer, this paragraph may need revision.

Corresponding coverage questions in NY 11-36:

1. Please describe an “AIDS home care program” and a “long term home health care program”. Are any of these programs part of a hospital, nursing facility or ICF?
2. Please explain why the registered professional nurse must be licensed and currently registered as a registered professional nurse pursuant to the New York Education Law.

3. Please confirm our understanding that the telehealth services are not separate services from part-time/intermittent nursing services, but only a different service delivery mode for part-time/intermittent nursing services under the home health services benefit. If this is correct, please reflect this understanding in the description of the telehealth services. If there are limitations on the amount, duration or scope of part-time/intermittent nursing services, will the telehealth services “count” against any limitation on amount or duration? For example, would it be considered a “visit” if the “visits” by a nurse were limited to 12 in a year?
4. We are attaching a copy of the CMS (then HCFA) September 4, 1998 guidance related to the DeSario v. Thomas decision to be sure the State is aware of it. In keeping with the guidance, does the State have a process in place to allow beneficiaries to request medical equipment, supplies and appliances not on the State’s approved list? If so, does the State’s process include notification of the right to a fair hearing if the request is denied?
5. If the State allows assistants or aides, such as PT Assistants, to furnish therapies, please add them to the State plan along with a brief description of the State’s arrangements for how they work “under the direction of” the qualified therapist.
6. Does the State require that Physical Therapists are graduates of a program of physical therapy approved by the Commission on Accreditation in Physical Therapy Education (CAPTE)?
7. Please explain why the State requires that the PT is “licensed by and currently registered with the New York State Education Department” or “has been issued a valid limited permit by that Department”.
8. Please explain why the State requires that the Speech Pathologist is “licensed as required by Article 159 of the New York Education Law”.

If you have any questions or wish to discuss this SPA further, please contact Ricardo Holligan or Shing Jew of this office. Mr. Holligan may be reached at (212) 616-2424, and Mr. Jew’s telephone number is (212) 616-2426.

Sincerely,

/s/

Ricardo Holligan  
Acting Associate Regional Administrator  
Division of Medicaid and Children’s Health

CC: JUlberg  
PMossman  
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